

A Pioneer In the Halls Of Justice

DREAM MAKERS, DREAM BREAKERS
The World of Justice Thurgood Marshall

By Carl T. Rowan
Little, Brown. 475 pp. \$24.95

THURGOOD MARSHALL
Warrior at the Bar, Rebel on the Bench

By Michael D. Davis and Hunter R. Clark
Birch Lane. 400 pp. \$24.95

THURGOOD MARSHALL: Justice for All

By Roger Goldman with David Gallen
Carroll & Graf. 509 pp. \$24.95

By Nadine Cohodas

WHEN LYNDON JOHNSON nominated Thurgood Marshall for the Supreme Court in 1967, he called it "the right thing to do, the right time to do it, the right man and the right place."

Three books tracing Marshall's half-century as lawyer, solicitor general and Supreme Court justice help explain what Johnson meant, particularly for those who know little about Marshall's long career before his ascent to the high court. The nation's leading civil-rights lawyer for 25 years, Marshall took his seat on a court previously made up only of white men—a court that by virtue of his efforts had dismantled the legal underpinnings of segregation. The symbolism in Johnson's selection was unmistakable.

As the NAACP's chief lawyer, Marshall had defended the poor dubiously charged with murder and soldiers wrongly accused of misconduct by their white superiors. He represented black students seeking to enter all-white universities and children seeking a better education than whatever was available in their rickety shack schoolhouses. In the 1954 *Brown v. Board of Education* decision—arguably Marshall's most famous case—the Supreme Court declared segregated schools unconstitutional, the critical step in toppling a host of other racial barriers.

Marshall's life, from his Baltimore boyhood to his NAACP practice and his days of glory and disillusionment on the Supreme Court, is as sobering as it is inspiring—a reminder of the frequent brutalities and indignities black Americans suffered under this country's racial caste system.

What is remarkable is that Marshall never exploded in rage over what he saw and experienced as he represented the disfranchised in courtrooms around the country. He kept his feelings in check, but the anger, often masked by acerbic and occasionally ribald humor, was never far from the surface. Toward the end of his career, anger was apparent in his harsh dissents against majority decisions that he believed were wrong-headed and devastating to the changes he had worked so hard to make.

During the bicentennial of

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Justice Thurgood Marshall

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the Constitution in 1987, many suggested that the Supreme Court sit in Philadelphia, as it had two centuries before. Marshall derided the idea, pointedly observing that "if you're gonna do what you did two hundred years ago, somebody's going to have to give me short pants and a tray so I can serve coffee."

The framers' government was "defective from the start," Marshall asserted, pointing out that only after several amendments, a civil war and "momentous social transformations" was there the "respect for individual freedoms and human rights we hold as fundamental today." Marshall, as these three books make clear, played a large role in giving the Constitution its contemporary meaning. Through his opinions—particularly on the rights of the poor, the death penalty and criminal-justice matters—he helped foster the constitutional debates that have been so much a part of our political life in the last decade.

The most robust of the three books is Carl Rowan's *Dream Makers, Dream Breakers*. Rowan, author, columnist and commentator, has known Marshall for nearly 40 years, and he acknowledges at the outset that his book is "not a hostile assault" on the man. On the contrary, it is a sympathetic portrayal, though not a piece of hagiography. Rowan lets Marshall's critics have their say, but he makes sure to answer them.

While this is Marshall's story, the book in its early chapters is also a profile of the NAACP and its offshoot Legal Defense Fund. Rowan was given access to the Fund's previously closed files—from them he culls rich and illuminating information about the internal workings of the organization (which so often was strapped for money) and the personality clashes among

the NAACP leaders as they developed their attacks on segregation.

Reading Rowan, I am reminded of the legendary pianist Artur Rubinstein, who professed surprise when reviewers criticized him for skipping over notes during a performance. He couldn't understand their disapproval, for in his mind he was making music, not giving a sterile rendering of the score. Here, Rowan is telling a story, not presenting an academic treatise, and if he misses a fact or nuance in his zesty rendering, so be it. For example, he appropriately casts Strom Thurmond, who vigorously opposed Marshall's Supreme Court nomination, as a "dream breaker," but twice he incorrectly states that Thurmond walked out of the 1948 Democratic Party convention. And he mischaracterizes Thurmond's 1954 U.S. Senate race, having him campaign before segregationist White Citizens Councils a year before the first council was created in South Carolina. Similarly, the debate within the NAACP over the Clarence Thomas nomination was more complicated than Rowan's scathing broadside suggests.

Such details aside, Rowan infuses the story of Marshall's legendary career with anecdotes and information that come from his own recollections and many conversations with Marshall over the years. If at times Rowan's personal observations seem intrusive or arrogant, they add more than they interfere because he offers many good stories in the process. His chapter on a long visit with Eleanor Roosevelt is charming and poignant; his account of an almost surreal interview with a bedridden George Wallace—another "dream breaker"—is fascinating.

Several excerpts from documents seem overlong, but by and large the book doesn't bog down. It is full of well-turned phrases, some of them vividly critical. The Justice Department's case against Spiro Agnew, for instance, established "the fact that this

smarmy, hypocritically moralistic, minorities-bashing vice president was just a two-bit crook." Lamenting the appointment of Thomas to succeed Marshall on the court, Rowan declares that the "chicken salad" days of Thurgood Marshall are over and the chicken shit has come home to roost."

Thurgood Marshall—Warrior at the Bar, Rebel on the Bench, by Michael D. Davis and Hunter R. Clark, covers the same ground as Rowan's book, but without Rowan's personal touch. Nonetheless, Davis, an Atlanta civil-rights leader and reporter, and Clark, a lawyer and writer, together present a readable account of Marshall's career. Their description of the NAACP's early days is informative; their reconstruction of Marshall's life in Harlem in the '30s is lively and instructive. So, too, is their discussion of how strategies for the *Brown v. Board of Education* litigation were shaped.

Among the most interesting chapters is the one that explores the clash between the older order—Marshall and his band of lawyers in the courtrooms—and the new generation of Martin Luther King and his followers, who took the struggle into the streets. Though Marshall was initially critical of King and his mass demonstrations—he called King an "opportunist, a 'first-rate rabble-rouser' and 'a coward'—he ultimately was willing to have the NAACP defend those who were arrested. Davis and Clark present a useful account of how the rapprochement came about.

Rowan and Davis and Clark discuss Marshall's work on the Supreme Court at the end of their books, going over opinions he wrote on a variety of subjects. Rowan seeks to answer critics who contend that Marshall's law clerks did most of his work by citing samples from Marshall's opinions and then matching them against Marshall's comments in extensive interviews with the author when no clerks were present.

Obviously, considerable research went into each of these books, and it is surprising that neither contains source notes, not so much to check the credibility of the writers as to assist readers and later researchers

who may want to delve into the archives themselves.

If one has read either Rowan or Davis and Clark, there is little that is new in the third book, *Thurgood Marshall: Justice for All*. Put together by Roger Goldman, a professor at the St. Louis University School of Law, and David Gallen, a New York attorney, this is a portrait of Marshall that blends reminiscences, short pieces and a discussion of Marshall's jurisprudence. The last part of the book lists 15 of Marshall's opinions and dissents.

Writing about Marshall's court work, Goldman makes the useful point that his dissents are important because "yesterday's dissent can become tomorrow's Supreme Court majority opinion." Furthermore, as he points out, other forums may be influenced by them—state supreme courts, state legislatures, the U.S. Congress and foreign countries that may be developing human rights law.

The recollections of Marshall's NAACP associate, Constance Baker Motley, provide special insights into the hurdles faced by a black woman. And four former law clerks write with affection about working for "The Judge," as Marshall preferred to be called at the high court.

The contributions Marshall made toward improving the lives of the poor and disenfranchised are monumental and beyond debate, but it is important, as these books show, to remember the effect he had on more fortunate people who came in contact with him, even if they disagreed with him and ultimately disappointed him. He served, in a way, as their conscience.

After Marshall's retirement, Justice Sandra Day O'Connor wrote that on the court Marshall pushed and prodded his colleagues—sometimes without success—to respond in their decisions "not only to the persuasiveness of legal argument but also to the power of moral truth." His fellow justice went on to say, "He is a man who sees the world exactly as it is and pushes on to make it what it can become. . . . No one could avoid being touched by his soul." ■